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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF IDAHO

**LAND VIEW FERTILIZER, INC.,  
RESPONSE TO DEBTOR'S  
OBJECTION TO CLAIM**

LANDVIEW FERTILIZER, INC., RESPONSE TO DEBTOR'S OBJECTION TO  
CLAIM--I

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## INTRODUCTION

Debtor filed a voluntary petition for relief on August 23, 1996. Land View filed its Proof of Claim in the sum of \$176,759.80 on December 18, 1996. Land View subsequently filed an Amendment to Proof of Claim on February 5, 1997. On February 3, 1997, Land View received debtor's Objection to Proof of Claim in this matter.

Land View's claim arises out of the selling of chemicals and fertilizer on credit to debtor. Fertilizer and chemical purchases were extended to debtor during the 1995 and 1996 growing seasons. Such chemicals and fertilizer were used on various crops grown by debtor.

On March 23, 1995, Land View entered into an account agreement with debtor. To secure the debt obligation resulting from the purchase of chemicals and fertilizer on credit, Land View was granted a security interest in the 1995 sugar beet crops grown in Owyhee, Payette and Canyon Counties and 1995 grain crops in Payette and Canyon Counties. On March 24, 1995, Land View perfected its security interest in the above-described crops by filing a farm products financing statement (form UCC-1F) with the Idaho Secretary of State.

Prior to the 1996 crop season, Land View once again financially extended itself by selling chemicals and fertilizer on credit to debtor. On May 6, 1996, Land View and debtor signed a second Security Agreement which attached a security interest in

debtor's 1995 sugar beet crops, 1996 barley and wheat crops and equipment owned by debtor. Land View filed a UCC-IF financing statement with the Idaho Secretary of State on May 15, 1996. Although Land View had previously perfected a lien on the 1995 sugar beet crops by its filing in 1995, the filing in 1996 had the effect of perfecting Land View's security interest in the 1996 barley and wheat crops and certain equipment held by debtor. On the same date, Land View filed a form UCC-I financing statement on farm equipment owned by debtor.

Land View's debt also stems from a promissory note dated May 6, 1996, in the original principal amount of \$126,563.46. A mortgage agreement was signed on the same date between the parties which pledged real property located in Canyon County as security for the payment and performance of the obligations owed to Land View. This documentation was properly filed with the Canyon County Recorder on May 6, 1996.

As of the date of the bankruptcy filing, debtor had not made any payments on the debt owed by him to Land View. Land View, as an over-secured creditor, is entitled to post-petition interest, costs, charges, and reasonable attorneys fees, pursuant to § 506(b) of the Bankruptcy Code.

## ARGUMENT

### *I. Land View has a Perfected Security Interest in the 1996 Wheat Crop Including the Proceeds from the Sale of Such Crop.*

As set forth above, Land View has attached a security interest in debtor's 1996 wheat crop through a written Security Agreement. Land View's security interest was perfected by the filing of a financing statement with the Idaho Secretary of State. Pursuant to Idaho Uniform Commercial Code § 28-9-306, Land View's security interest in the crop collateral continues to be perfected in the cash proceeds from the sale of the wheat crop. Thus, Land View has a senior crop lien to the cash proceeds held by the trustee, Ronald Schoen.

As of the date of this filing, the 1996 wheat crop has been sold and the trustee has received \$105,342.57. Despite debtor's contention to the contrary, Land View's secured claim has priority over unsecured administration expenses and costs. The Bankruptcy Code defines expenses of administration as unsecured claims.<sup>1</sup> Hence, Land View's secured claim to the proceeds from the sale of the 1996 wheat crop has priority over any expenses of administering the bankruptcy estate.<sup>2</sup>

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<sup>1</sup>See, 11 U.S.C. § 507. See also, *IRS v. Boatmen's First National Bank of Kansas City*, 5 F.3d 1157, 1158 (8<sup>th</sup> Cir. 1993) (administrative expenses may not be charged against secured collateral).

<sup>2</sup>11 U.S.C. § 506(c) provides a limited exception for the recovery of administrative expenses by a trustee, but this exception is not applicable in this bankruptcy case.

**II. *Land View has a Perfected Security Interest to the Proceeds of the 1995 Sugar Beet Crop Grown in Owyhee County and has Priority Over All Other Creditors.***

Land View has entered into a Security Agreement with debtor pertaining to the 1995 sugar beet crop grown in Owyhee County and has properly perfected the lien on such crop by filing a UCC-1F financing statement with the Idaho Secretary of State in 1995. Land View's secured position on the crop was reaffirmed in 1996 by the filing of a second filing statement with the Secretary of State.

In relation to the proceeds from the sugar beet crop grown in Owyhee County, Land View has priority over any security interest claimed by The Amalgamated Sugar Company ("TASCO"). On April 18, 1995, TASCO filed with the Idaho Secretary of State a farm products financing statement covering the sugar beet crop grown in Owyhee County. As mentioned previously, Land View filed a similar financing statement covering the sugar beet crop in Owyhee County on March 24, 1995. Due to its earlier filing, Land View has a priority interest over TASCO to the 1995 sugar beet crops grown in Owyhee County.

Recognizing Land View's senior lien to the Owyhee County crop, TASCO sought Land View's interest in said crop. On April 17, 1995, Land View agreed to

subordinate its interest in the crop on the Owyhee County property to TASCO.<sup>3</sup> A true and correct copy of the Waiver and Subordination Agreement is attached hereto as Exhibit "A" and incorporated herein by this reference. Through this agreement, Land View agreed to subordinate its interest to the extent of \$460.00 per acre. Therefore, TASCO's entitlement to proceeds from the sale of the 1995 sugar beet crop cannot exceed this amount. The sugar beet crop has been sold, and TASCO holds all proceeds from the sale of said crop. The amount held by TASCO exceeds the agreed upon price of \$460.00 per acre. Despite being completely satisfied, TASCO now improperly holds proceeds from the sale of the sugar beet crop from Owyhee County in the amount of \$30,000.00. Therefore, TASCO is in possession of proceeds which it is contractually obligated to distribute to Land View.

**III. *Land View has a Secured Claim to the Debtor's Real Property Located in Canyon County, Idaho.***

As set forth above, Land View holds a mortgage against the property in Canyon County.<sup>4</sup> Land View's lien secures a promissory note in the sum of

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<sup>3</sup>Land View and TASCO entered into a separate and distinct Waiver and Subordination Agreement for the sugar beet crop grown by debtor in Payette County. Land View has not received any proceeds from the sale of the Payette County sugar beet crop.

<sup>4</sup>On May 6, 1996, Land View and debtor agreed to a promissory note secured by a mortgage on the Payette County property. Pioneer Title Company of Nampa failed to record this lien with the Payette County Recorder and instead filed it with the Canyon County Recorder. As an admission of fault, Pioneer Title Company filed the mortgage with Payette County Recorder on January 8, 1997. Land View did not

\$126,563.46, plus interest at 14.5% per annum. Debtor is in default of the note for failure to make the first installment of \$60,759.63 due on December 1, 1996.

Despite Land View's lien on the real property in Canyon County, debtor maintains that Land View does not have a secured claim to the property. This is not accurate. Travelers has a superior lien on debtor's real property located in Canyon and Payette Counties. The amount of Travelers' claim is \$480,030.00. The appraised value of debtor's real property well exceeds Travelers' claim amount. Therefore, there is sufficient equity existing in the Canyon County property to classify Land View's claim as secured.

### CONCLUSION

The secured status of Land View to the 1995 sugar beet crop grown in Owyhee County, to the 1996 wheat crop, and to the debtor's real property has been firmly established. Based on the foregoing, Land View prays that this court recognize the validity of its filed Proof of Claim.

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have responsibility for this filing and recognizes the automatic stay in this bankruptcy proceeding.

LANDVIEW FERTILIZER, INC., RESPONSE TO DEBTOR'S OBJECTION TO CLAIM--7

DATED this 28<sup>th</sup> day of February, 1997.

WHITE, PETERSON, PRUSS,  
MORROW & GIGRAY, P.A.

By John D. Harrington  
John D. Harrington  
Attorneys for Land View Fertilizer, Inc.

**CERTIFICATE OF SERVICE**

I, the undersigned, do hereby certify that a true and correct copy of the foregoing Land View Fertilizer, Inc., Response to Debtor's Objection to Claim was served upon the following:

Office of the U.S. Trustee  
Post Office Box 110  
Boise, ID 83701

☒ Mailed  
☐ Faxed  
☐ Hand delivered

Howard R. Foley  
Foley & Freeman  
Post Office Box 10  
Meridian, ID 83680

☒ Mailed  
☐ Faxed  
☐ Hand delivered

Ronald D. Schoen  
Standing Chapter 12 Trustee  
P. O. Box 216  
Payette, ID 83661

☒ Mailed  
☐ Faxed  
☐ Hand delivered

this 28<sup>th</sup> day of February, 1997.

John D. Harrington  
John D. Harrington

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LANDVIEW FERTILIZER, INC., RESPONSE TO DEBTOR'S OBJECTION TO  
CLAIM--8



DATE: 11-13-95

(Name of Grower) TERRY L. HIPWELL, A SINGLE MAR of  
 (Address) 30932 SHELTON ROAD (City) PARMA  
 (County) OWYHEE (State) IDAHO  
 (hereinafter whether singular or plural called "Debtor") hereby grants to The Amalgamated Sugar Company (hereinafter called "Secured Party") a security interest in the collateral hereinafter described to secure payment of all money advanced to Debtor pursuant to Debtor's Loan Agreement(s) with Secured Party. This Security Agreement is subject to the terms and conditions of such Loan Agreement(s). This Security Agreement also secures the payment of any other money loaned by Secured Party to Debtor, now or in the future.

1. Collateral.

- a. Debtor grants to Secured Party a security interest in approximately 475.0 acres of sugarbeets or other crops, now sown and growing or to be sown or grown two years (five years in the State of Oregon) from the date of execution hereof, on the following described real property in OWYHEE County, State of IDAHO.

IN THAT PART OF: E2, SEC 17, TWP 3S, RG 1WBN;  
 N2 NWA, SEC 20, TWP 3S, RG 1WBN;  
 NWA, SEC 10, TWP 3S, RG 1WBN

- b. The name of the record owner of said real property is HULET MANAGEMENT COMPANY.
- c. Debtor also grants to Secured Party a security interest in all products and proceeds of the foregoing crops, including, but not limited to cash; contract rights, including insurance proceeds private or governmental; accounts receivable; and government disaster or similar payments.

2. Warranties. Debtor hereby warrants and covenants:

- a. Debtor is now the owner of the Collateral free from any adverse lien, security interest, or encumbrance and that no financing statement pertaining to any portion of the Collateral is on file in any public office, except as set forth below:

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LANDVIEW FERTILIZER

- b. The Collateral shall not be removed from the above real property without the prior written consent of Secured Party, except for the sale of the Collateral to Secured Party.
- c. Debtor shall keep the Collateral in good condition. Debtor shall not waste or destroy the Collateral or any part thereof, and shall plant, cultivate, and harvest the crops in a good and farmerlike manner.
- d. Debtor agrees to execute and file financing statements and do whatever may be necessary under applicable law to perfect and continue Secured Party's security interest.

3. Sale of Collateral Prohibited. It is understood between the parties that the Collateral consisting of sugarbeets is to be sold only to Secured Party. Sale of the crop of sugarbeets, or any other crop from the above described real property, to any other person, firm, or corporation is expressly prohibited without the written consent of Secured Party and upon terms and conditions approved by Secured Party.

4. Payment of Expenses by Secured Party. Debtor shall promptly pay any and all taxes, liens, or other expenses or obligations relating to the Collateral. If any such tax, lien, or other expense or obligation relating to the Collateral is not paid by Debtor promptly when due, Secured Party, at its option, may pay any such indebtedness. Debtor shall promptly reimburse Secured Party on demand for any such payments.

5. Defaults. Debtor shall be in default under this Security Agreement on the happening of any one of the following events or conditions or any combination thereof:

- a. Failure to make any payment or perform any obligation under Debtor's Loan Agreement with Secured Party, including the exercise by Secured Party of its right to refuse any cash advance because the Collateral does not justify such advance.
- b. The falsity in any material respect of any warranty, representation, or statement made or furnished to Secured Party in connection with Debtor's Loan Agreement with Secured Party or this Security Agreement;
- c. Any event which results in the acceleration of the maturity of the indebtedness of Debtor to others under any agreement or understanding;
- d. The damage, destruction, sale, or encumbrance of any of the Collateral, or the making of any levy on or seizure or attachment of, the Collateral;

EXHIBIT A

c. Insolvency of any voluntary or involuntary proceeding under the bankruptcy law, any insolvency laws against Debtor; the death, insolvency or business failure of Debtor; the appointment of a receiver for any part of the property of Debtor; assignment for the benefit of Creditors by Debtor;

- f. The failure of Debtor as determined by Secured Party in its sole judgement, to plant or cultivate the crops referred to herein, in due season, and in a good and farmerlike manner, or to properly care for or protect any Collateral;
  - g. The failure of Debtor to harvest the crops referred to herein in a timely manner. In the event Secured Party in its sole judgement, determines that the Collateral is subject to possible loss or reduction if not harvested within a certain period, the failure of Debtor to so harvest shall be a default.
6. Remedies. All obligations secured hereby shall be immediately due and payable upon default hereunder, and Secured Party shall have all of the remedies under the Uniform Commercial Code, or other applicable law, of the State where the above real property is located, including:
- a. Upon demand, Debtor shall give possession of the Collateral to Secured Party and assemble the Collateral at a reasonably convenient place. Secured Party is authorized to enter any premises where the Collateral is located and to take such actions, including cultivating and harvesting, as necessary, to protect the Collateral;
  - b. Debtor hereby agrees that a period of five (5) days from the time notice is sent, by first-class mail or otherwise, shall be a reasonable period of notification of a sale or other disposition of the Collateral;
  - c. Debtor agrees to pay all expenses incurred by Secured Party in protecting the Collateral and in cultivating, harvesting, retaking, holding, preparing for sale, selling, and other expenses reasonably incurred in enforcing any remedy available to Secured Party, including reasonable attorney's fees and other legal expenses of Secured Party, and payment of all said sums shall be secured hereby;
  - d. After any disposition of the Collateral, Debtor agrees to pay any deficiency remaining after application of the net proceeds to any indebtedness secured hereby;
  - e. Secured Party shall have the right immediately and without further action by it, to setoff against the obligations of Debtor all money owed by Secured Party in any capacity to Debtor, whether or not due, and Secured Party shall be deemed to have exercised such right of setoff and to have made a charge against any such money immediately upon occurrence of such default even though such charge is made or entered on the books of Secured Party subsequent thereto.
7. Successors. This Agreement shall be binding upon the successors, heirs, assigns, and representative of the parties hereto.

IN WITNESS WHEREOF, Debtor has caused this Security Agreement to be executed the day and year first written above.

X TERRY L. HENWELL DEBTOR THE AMALGAMATED SUGAR COMPANY  
By: [Signature]

#### WAIVER AND SUBORDINATION AGREEMENT

Debtor, named in the foregoing Security Agreement has sought a loan to enable the production of a crop on certain real property (the "land") described in said Agreement and The Amalgamated Sugar Company ("Amalgamated") has agreed to make said loan upon certain terms and conditions.

The undersigned claims an interest, legal or equitable, in the crop on the land, whether as owner, mortgagee, trust deed beneficiary, prior mortgagee, sharecropper, landlord, tenant, land sales contract, or any interest of any kind or character.

In consideration of and in order to induce Amalgamated to loan money to Debtor, the undersigned hereby subordinates and waives any and all rights, claims, liens, or interest which the undersigned now have or may hereafter acquire, in any manner whatsoever, in or to the said crop, or other crop grown on the land, and the proceeds from the sale thereof, to the extent of \$ 250.00 per acre, plus interest, plus any expenses incurred by Amalgamated in growing, cultivating, harvesting, and delivering the Collateral as provided below, which is the interest of Amalgamated in the Collateral and specifically agrees that enforcement of any and all rights of the undersigned shall be deferred until such time as Amalgamated's interest is fully paid, satisfied, and discharged.

The undersigned consents to Amalgamated exercising its remedies under the foregoing Security Agreement upon default of Debtor, including, but not limited to growing, cultivating, harvesting, and delivering the Collateral and in incurring expenses related thereto.

	Signed	Date
pmi 04-05-95	<u>TERRY L. HENWELL</u>	
	<u>[Signature]</u>	<u>4/13/95</u>
	<u>[Signature]</u>	<u>4/17/95</u>

#### CASH LEASE WAIVER

The undersigned has leased the real property described in the foregoing Security Agreement to Debtor for a cash rental and claims no interest, legal or equitable, in the crop on said land. The undersigned further claims no interest in Amalgamated's sugarbeet payments to Debtor and agrees such payment may be made solely to Debtor.

Signed: [Signature] Date: April 14 - 95

EXHIBIT A